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UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARIA OLIVERA-SUAREZ and ALFONSO OLIVERA B., Plaintiffs, vs. UNITED STATES, Defendant.	Case No.: ______________ **COMPLAINT FOR MEDICAL NEGLIGENCE**

COME NOW Plaintiffs, by and through their attorney of record, John Ferguson, and for causes of action against Defendant, allege as follows:

I. IDENTIFICATION OF PARTIES

1.1. Plaintiffs MARIA OLIVERA-SUAREZ (a.k.a. MARIA OLIVERA) and ALFONSO OLIVERA B., husband and wife at all material times herein, bring this medical malpractice action against the Defendant. At all material times herein, Plaintiffs were residents of the State of Washington and residing in Yakima County. (Herein, Plaintiff MARIA OLIVERA-SUAREZ will at times be called “MARIA OLIVERA” or “Mrs. Olivera.”)

1.2. At all material times, Defendant UNITED STATES is and was the sovereign government of the United States of America.

II. FEDERAL SUBJECT MATTER JURISDICTION AND VENUE

2.1. Certain of the healthcare alleged herein to have been negligent was rendered by certain individuals (including Dr. John Naiden) who were acting within the course and scope of their employment or other agency relationship with Yakima Valley Farm Workers Clinic ("YVFWC") at the time that they rendered their healthcare to Plaintiff MARIA OLIVERA. On the basis of representations made by the Office of General Counsel at the U.S. Department of Health and Human Services, Plaintiffs allege that at all relevant times herein: (a) YVFWC was and is a covered Community Health Center under the Federally Supported Health Centers Assistance Acts ("FSHCAA"), (b) the acts and omissions of the employees, contractors, and other agents (jointly, "employees") of YVFWC in relation to Plaintiff MARIA OLIVERA were done in the course and scope of those employees' employment or other agency relationship with YVFWC and were and are "covered activities" under the FSHCAA, and (c) both YVFWC and its employees rendering care to Plaintiff MARIA OLIVERA had and have "deemed status" as U.S. Public Health Service employees and so are entitled to the protections of the FTCA.[1] At all material times herein, Defendant UNITED STATES acted by and through YVFWC and its FTCA-covered employees. If Defendant UNITED STATES were a private person, it would be liable to Plaintiffs under the laws of the State of Washington. Under the applicable law, neither YVFWC nor any of its FTCA-covered employees may be sued individually, but rather suit for their acts and omissions must be brought against the United States in federal district court. 42 U.S.C. §§ 233, 254b; 28 U.S.C. §§ 1346, 2679. Thus, jurisdiction is proper in this Court.

2.2. Plaintiffs presented an administrative claim to the U.S. Department of Health and Human Services within two years of the acts alleged in this Complaint. More than six months have elapsed since presentation of the claim but not more than six months have elapsed after any denial of the administrative claim. Thus, Plaintiffs have exhausted their administrative remedies under 28 U.S.C. § 2675(a), and this action is timely under 28 U.S.C. § 2401.

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[1] The Federally Supported Health Centers Assistance Acts of 1992 (Pub. L. 102-501) and 1995 (Pub. L. 104-73) extend Federal Tort Claims Act ("FTCA") protections under 28 U.S.C. 1346(b), 2401(b), and 2679-81 to eligible health centers funded under the Health Center Program, section 330 of the Public Health Services Act (42 U.S.C. 254b), as amended.

2.3. The events that give rise to this lawsuit occurred in Yakima County, Washington, in the judicial district for the United States District Court, Eastern District of Washington. At all material times, Plaintiffs were and are residents of Yakima County. Thus, venue is proper in this Court. 28 U.S.C. § 1402(b).

III. FACTS[2]

3.1. On December 21, 2015, Plaintiff MARIA OLIVERA (then age 71) underwent an elective gynecological procedure (essentially a bladder sling operation) for urinary stress incontinence. The procedure consisted of a laparotomy to remove a possible remaining ovary, a paravaginal repair done abdominally, and then an anterior repair, transobturator tape placement, posterior repair, and vaginal vault fixation done vaginally. The surgery was performed at Yakima Valley Memorial Hospital ("YVMH," now known as "Virginia Mason Memorial") and was conducted by Dr. John Naiden, assisted by Dr. Michelle Eston (apparently a second-year resident with the University of Washington Obstetrics & Gynecology Residency Program at the time). All acts of Dr. Eston were directly supervised by Dr. Naiden, and he is responsible for any of her acts and omissions that were negligent. The operating surgeons unknowingly injured Mrs. Olivera's rectum during the procedure and closed her without becoming aware of the injury. Despite the undiagnosed injury, Mrs. Olivera had minimal pain after the surgery, which was controlled with minimal pain medication, and she was discharged home in stable condition on December 23 (two days post-surgery).

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[2] A number of the facts alleged herein are based on the entries in the medical records. If the facts turn out to be different than as stated in the medical record entries, Plaintiffs reserve the right to amend their Complaint to conform to those facts.

3.2. However, Mrs. Olivera returned the day after discharge and presented to the Emergency Department at YVMH at about 8:00 p.m., with the Presenting Problems of "Fever, Abdominal Pain." She was febrile (38.8°C), tachypneic (RR 28), and tachycardic (HR 111). Her oxygen saturation on room air was in the mid-to-high 80s, with some readings in the low 90s. She was admitted to the general floor with the diagnoses of "Healthcare Associated vs. Ventilator Acquired/Associated Pneumonia, with associated Sepsis and Acute Hypoxic Respiratory Failure." A two-view chest x-ray obtained about 8:00 a.m. the next morning (December 25) did not show pneumonia but did show a small quantity of intraperitoneal free air subjacent to the right hemidiaphragm, which the interpreting radiologist stated was "hopefully related to the patient's stated prior history of recent surgery," but he nonetheless recommended clinical correlation "to exclude a bowel perforation." A CT Pulmonary Angiogram showed intraperitoneal free air subjacent to both hemidiaphragms and in addition showed intraperitoneal free fluid adjacent to the right lobe of the liver and subjacent to the right hemidiaphragm, and that radiologist also recommended clinical correlation.

3.3. Within 24 hours of her readmission, Dr. Naiden was notified that his patient had been readmitted. Over the next six days as she failed to improve and indeed her condition worsened, Mrs. Olivera was seen by ENRIQUE JIMENEZ, M.D., AND JACOB JOY, M.D., as well as by other actual or ostensible agents of YVMH. According to the medical records, Dr. Naiden did not go in to see Mrs. Olivera until December 29, four days after being notified of her readmission. On December 31, plans were in place to discharge Mrs. Olivera home that day or the next, over the family's strong objections that she had been continually getting worse, not better. During this entire period of time, the treating healthcare providers never investigated for a potential bowel perforation, despite signs, symptoms, and findings requiring, under the applicable standard of care, that such an investigation be undertaken.

3.4. In the mid-afternoon of December 31, before the healthcare providers could discharge Mrs. Olivera home, she decompensated, leading to the Rapid Response Team being called and ultimately to CT scanning of the abdomen and pelvis, which revealed multiple air-fluid pockets in the abdomen, a pelvis that was suspicious for bowel perforation, a pocket of fluid and debris located in the midpelvic region in an interloop location that was thought to represent either abscess or leaking bowel contents or perhaps a retained sponge, and a “markedly distended” stomach and moderately dilated loops of small bowel with decompressed distal small bowel and colon, suggestive of small bowel obstruction. This led to a surgical consult and then surgery that evening, described as exploratory laparotomy, sigmoid colon resection, mobilization of splenic flexure, placement of negative-pressure wound therapy dressing greater than 50 square centimeters, and right internal jugular central venous catheter placement. The Operative Report describes that immediately upon entering the abdomen, there was a large amount of frank stool. As the small bowel began to be mobilized, there were multiple fluid pockets. As the pelvis was entered, again there was frank stool. A hole in the rectum was identified, but the tissue was friable and not amenable to primary repair. Due to the frank intraabdominal contamination, the surgeons resected the sigmoid colon and then attempted to bring up the colostomy. However, the surgeons were unable to close the fascia, and the patient was kept in discontinuity and an ABThera wound VAC was placed. Upon completion of the surgery, Mrs. Olivera was transferred to the ICU in critical condition. Thereafter while at YVMH, she underwent a tortuous medical course consisting of multiple surgeries and procedures for multiple complications.

3.5. For more than a month at YVMH, the treating healthcare providers were unable to effect closure of Plaintiff MARIA OLIVERA's abdomen, and she was transferred to Oregon Health and Science University Hospital ("OHSU") for a higher level of care. Mrs. Olivera subsequently underwent numerous additional and painful surgeries and procedures for multiple complications over the ensuing months, both at OHSU and later at Swedish Hospital, as well a lengthy stays at rehabilitation hospitals, as detailed in the medical records. At times throughout this ordeal, she was near death.

3.6. Mrs. Olivera was discharged home in July 2016 with home health nursing, physical therapy, and occupational therapy. At present, she has a massive ventral hernia, with CT scanning showing complete loss of abdominal domain with her rectus muscles retracted severely laterally and the hernia defect measuring 25-28 cm. (about 10 inches). (In lay terms, although her skin is closed, her fascia and muscle are not, and most of her intestines are outside of the abdominal cavity. Among other things, this leads to engorgement of the visceral vasculature, altered respiratory function, and loss of anterior spinal support.) Corrective surgery is too risky for Mrs. Olivera, and so this condition is permanent, as is her colostomy. All of the foregoing medical care and injuries and other damages were directly and proximately caused by Dr. Naiden's original surgery and the later failure to timely diagnose and appropriately treat Mrs. Olivera.

IV. CLAIMS AGAINST DEFENDANT

4.1. Because of the fiduciary healthcare provider-patient relationship that existed between Plaintiff MARIA OLIVERA and each of Defendant's covered employees who rendered healthcare services to Plaintiff, Defendant and each of those covered employees owed to Mrs. Olivera a duty to comply with the standard of care applicable to the profession or class to which each particular employee belongs (e.g., physician, certified physician assistant, advanced registered nurse practitioner, healthcare clinic, hospital, or other type of healthcare provider, as may be applicable), practicing in the state of Washington. This included the duty to exercise the degree of skill, care, and learning expected of a reasonably prudent member of the profession or class to which the covered employee belongs, including any specialization within any such profession or class, in the state of Washington and acting under the same or similar circumstances and at the same time of the care and/or treatment in question. With regard to YVFWC, its duty included the duty to exercise the degree of skill, care, and learning expected of a reasonably prudent clinic of the same type as YVFWC, in the state of Washington and acting under same or similar circumstances and at the same time as the care, treatment, and/or acts or omissions in question. Failure of any covered employee or covered entity have exercised such skill, care, and learning constituted a breach of the applicable standard of care and is negligence.

4.2. Defendant's covered employees, and thus Defendant, failed to obtain Plaintiff MARIA OLIVERA's informed consent as a patient in that Defendant (through its employees) failed to inform the Plaintiff of material facts concerning the risk of the procedures and other treatment referred to herein and failed to inform the Plaintiff concerning the recognized possible alternative forms of treatment. Plaintiff consented to Defendant's care and treatment without being fully informed of such material facts. A reasonably prudent patient under similar circumstances would not have consented to such care and treatment if informed of such material facts. The care and treatment in question proximately caused the injuries to Plaintiff MARIA OLIVERA herein alleged.

4.3. The acts and/or omissions of Defendant in its care and treatment of Plaintiff MARIA OLIVERA were negligent, breached fiduciary duties, constituted an impermissible failure to obtain informed consent from Plaintiff, and otherwise constituted tortious conduct, and Defendant is liable to Plaintiff for such acts and/or omissions under the laws of the state of Washington, including RCW 7.70 *et seq*. and other applicable law.

4.4. Plaintiffs hereby notify Defendant that they are pleading all theories of recovery and bases for liability available pursuant to Washington state law. This includes, but is not limited to, negligence (including negligent failure to appropriately triage, investigate, evaluate, monitor, treat or not treat, diagnose, intervene, test, refer, warn, supervise, and otherwise render the necessary care that its patient Plaintiff MARIA OLIVERA required, and including failure to communicate with Plaintiff in a fashion that she could fully understand), failure to obtain informed consent, lost chance of a better outcome and of avoiding the bad outcome that occurred, and breach of fiduciary duties. Additional acts and/or omissions with respect to the care and treatment of Plaintiff MARIA OLIVERA will be fully shown at the time of trial, after the completion of pre-trial discovery.

V. CAUSATION AND DAMAGES

5.1. As a direct and proximate result of Defendant's negligence, failure to obtain informed consent, breach of fiduciary duties, and other tortious conduct, Plaintiff MARIA OLIVERA has suffered injury and damages, including but are not limited to:

- Past and future noneconomic damages (including pain, suffering, and unimaginable agony; disability; disfigurement; loss of function; loss of enjoyment of life; mental anguish and emotional distress; humiliation; inconvenience; loss of society and companionship; and loss of consortium);

- Past and future economic damages (including the reasonable value of medical care, treatment, and services and related expenses; lost value of domestic services; cost of home care and the value of necessary substitute domestic services and other nonmedical expenses; and lost earnings and lost earnings capacity); and
- Lost chance of a better outcome and of avoiding the bad outcome that occurred.

As a direct and proximate result of Defendant's negligence, failure to obtain informed consent, breach of fiduciary duties, and other tortious conduct, Plaintiff ALFONSO OLIVERA B. has suffered loss of spousal consortium and other injuries and damages. Damages will be proven at the time of trial in amounts as deemed reasonable and proper by the trier of fact.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant for all general and special damages caused by Defendant's acts and omissions, including but not limited to the following:

a. For Plaintiff MARIA OLIVERA for past and future noneconomic damages: $4.5 million or as may be proven by the evidence;

b. For Plaintiff MARIA OLIVERA for past and future economic damages:

- The reasonable value of lost domestic services and cost of obtaining household assistance: $950,000 or as may be proven by the evidence;
- The reasonable value of past and future medical and ancillary expenses: $1.2 million or as may be proven by the evidence;
- Past and future miscellaneous expenses: $50,000 or as may be proven by the evidence;
- Past and future lost earnings: $100,000 or as may be proven by the evidence;

c. For Plaintiff ALFONSO OLIVERA B. for past and future loss of consortium: $500,000 or as may be proven by the evidence;

d. For both Plaintiffs, recoverable costs of suit;

e. For both Plaintiffs, pre- and post-judgment interest as may be allowed by law; and

f. For both Plaintiffs, all such other relief as the Court may deem just and proper.

DATED: March 20, 2017

s/John H. Ferguson

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